IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7337 of 2005

Between:

1. The Commissioner of Archaeology and Museum Department, Hyderabad.

2. The Assistant Director (T), Quli Qutb Shahi Tombs, Golconda, Hyderabad.

..... PETITIONERS

AND

Smt. Zeenath, Malan (Retd.), W/o. Late Mohd. Khan,
H.No. 9-4-16, Banjari Darvaja, Golkonda Fort, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ or proceedings more particularly one in the nature of "WRIT OF CERTIORARI" calling for the records pertaining to the order passed on 8.3.2004 in O.A.No.4601/03 with VMA No.119/04 on the file of the Hon'ble A.P. Administrative Tribunal, Hyderabad and quash the same as illegal and arbitrary and pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: GP FOR SERVICES-I

Counsel for the Respondent: MR. G.Dasaradha Rami Reddy

The Court made the following:

O R D E R: (Per GB, J)

This Writ Petition is filed assailing the Order dated 8.3.2004 passed by the A.P.Administrative Tribunal, Hyderabad in O.A.No.4601 of 2003 with VMA No.119 of 2004.

2) This matter relates to the fixation of the date of birth to Class-IV employee. The respondent herein is the applicant before the Tribunal. The respondent was appointed on 1.5.1984 on compassionate grounds, consequent to the death of her husband on 14.2.1983. She was appointed on the compassionate scheme. At the time of appointment, she was sent for medical examination and the Doctor certified that she was at the age of 29 years as on 3.5.1984. However, for the reasons best known to the authorities, the Department entered the date of birth as 1.7.1943. On that basis, she had said to be retired on 30.6.2003. The said retirement was challenged before the Tribunal on the ground that the date of birth was not correctly entered in the service register and the same was fixed on the basis of physical appearance as 1.7.1943. The Tribunal accepted the contention of the petitioner and allowed the O.A., directing the authorities to treat the date of birth of petitioner as 30.6.1954 instead of 1.7.1943. Against the said order, the present Writ Petition is filed.

3) The learned Government Pleader, however, submits that the date of birth

was entered as 1.7.1943 when she was entered into service and she has signed the papers also. Therefore, the principle of *estoppel* will operate against the petitioner and she cannot now contend that her date of birth was different that what was entered in the service register.

4) The learned Tribunal considered this matter *in extenso* and taking into consideration of the relevant rules and also the certificate issued by the medical authority, it observed thus:

> "This Court has carefully considered the material available on record. It is noticed that in the appointment order, the respondents had specifically directed the applicant to appear before the Civil Surgeon and to obtain the age and health Certificate. Accordingly, she has appeared before the Civil Surgeon and obtained the health and age Certificate on 3.5.1984. It is an undisputed fact that the applicant is an illiterate and as far as the qualifications to hold the post of Malan are concerned, one must be able to read and write Telugu or Urdu or English or Hindu and (ii) must have experience for one year in the relevant vocation, as per the Annexure issued under Rule 5(a) of A.P.Last Grade Service Rules.
>
> As per health and age Certificate issued by the Civil Surgeon, the applicant was appearing 29 years old as on 3.5.1984. This Court has further perused the entries made at page No.2 of the pension papers. In the Column No.2 it is stated that the "date or approximate date of birth". In the said column, it is mentioned as 40 years. No date or approximate date of birth is filled in the particular column. It is seen that before the authorities there were two dates of birth obtaining as on the date of entry of the applicant into service. The authorities necessarily ought to have determined the date of birth and subsequently could have recorded the same in the service record, in accordance with Rule 2 of G.O.Ms.No.165, dated 21.4.1984 which reads as follows:
>
> 1. Every Government employee shall, within one month from the date on which he joins duty, make a declaration as to his date of birth.
>
> 2. On receipt of the declaration made under sub-rule(1), the Head of Office or any other officer who maintains the service records in respect of such Government employee shall, after making such enquiry as may be deemed fit, with regard to the declaration and after taking into consideration such evidence, if any, as may be adduced in respect of the said declaration, make an order within four months from the date

on which the Government employee joins service, determining the date of his birth.

Provided that in cases where the date of birth as determined under this sub-rule is different from the one declared by the Government employee concerned under sub-rule (1), he shall be given an opportunity of making a representation, before a final order is made.

The authorities, after receipt of the health and age certificate, produced by the applicant ought to have given an opportunity of making a representation before final order of entering the date of birth is made in the service record. Obviously, the applicant is an illiterate. The applicant was directed to produce the health and age Certificate. The health and age Certificate, produced by her, ought to have taken into consideration by giving due opportunity and then the authorities should have determined her date of birth. This has not been done in this case.

It is further seen that this Tribunal, by orders dated 30.6.2003 in O.A.6498/99 has categorically directed the respondents to pass necessary orders on the basis of the Certificate issued by the Civil Surgeon at the time of her entering into service in regard to the age and date of birth of the applicant. The applicant being an illiterate necessarily depended on some other person in filling the pension papers.

Having regard to her ignorance, the date of birth of the applicant might have been recorded as 40 years. The authorities ought to have taken a recorded document, in proof of age submitted by the applicant, at the time of entry into service. Obviously, this has not been done. Therefore, the reasons assigned in the impugned orders are not at all convincing and hence the impugned orders are set aside and there shall be a direction to the respondents to treat the applicant's date of birth as 30.6.1954 instead of 1.7.1943 as correct date of birth on the basis of age of age in health certificate. The O.A. is accordingly allowed."

5) Thus, the learned Government Pleader, however, submits that the order is not sustainable inasmuch as the respondents having known her date of birth did not make any objections; therefore, the Tribunal is not justified in granting the relief. We are afraid we cannot accept the said contention. Admittedly, she is working as Malan in Class-IV category and she being illiterate, the principle of *estoppel* cannot be put against her on the premise that the entry made in the

service register was signed by the respondents. Under these circumstances, we find that the Order of the Tribunal cannot be said to be illegal and contrary to law.

6) The Writ Petition is accordingly dismissed. No order as to costs.

G. BIKSHAPATHY, J

P.S. NARAYANA, J

12th April 2005.

BCS+BCJ

ASSISTANT REGISTRAR

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SECTION OFFICER

To

1) 2 CD copies

2) 1 CC to MR.DASARADHA RAMI REDDY